



POLICE DEPARTMENT

May 27, 2010

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Seamus Lavin
Tax Registry No. 920494
24 Precinct
Disciplinary Case No. 83341/07

The above-named member of the Department appeared before me on February 10, 2010, charged with the following:

1. Said Lieutenant Seamus Lavin, assigned to the 24 Precinct, on November 28, 2006, at approximately 2330 hours, while on-duty, and after being informed by an individual, identity known to the Department, that she was the victim of a serious violent offense, failed to conduct an investigation of said offense and prepare related reports, as required.

P.G. 202-17, Page 1, Paragraph 9 – DUTIES AND RESPONSIBILITIES –
PATROL SUPERVISOR

2. Said Lieutenant Seamus Lavin, assigned to the 24 Precinct, on November 28, 2006, at approximately 2330 hours, while on-duty, did wrongfully and without just cause, fail to properly supervise other members of the service under his supervision to wit: said Lieutenant improperly directed his subordinates not to prepare a complaint report for an individual identity known to the Department, who reported being the victim of a serious violent offense.

P.G. 202-17, Page 1, Paragraph 5 – DUTIES AND RESPONSIBILITIES –
PATROL SUPERVISOR

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and the Respondent was represented by Philip Karasyk, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that the Respondent, assigned to the 24 Precinct, was on duty on November 28, 2006, assigned as platoon commander, performing the function of patrol supervisor, when he responded to a radio transmission that Katherine Linh had called 911 and reported that she was the victim of a robbery. The Respondent immediately responded to Linh's residence at [REDACTED]. Police Officers Peter Lumia and Michael Wilson also responded to the call.

The Department's Case

The Department called Captain Joseph DiBartolomeo and Police Officers Peter Lumia and Michael Wilson as witnesses.

Captain Joseph DiBartolomeo

Captain Joseph DiBartolomeo, who is presently assigned to Internal Affairs Bureau (IAB) Group 12, recalled that during 2006 he was assigned to IAB Group 1 and

that he conducted an investigation into Lihn's allegation that even though she had just been the victim of a robbery, the Respondent and Officers Lumia and Wilson had refused to take a complaint from her on November 28, 2006. DiBartolomeo interviewed Lihn; he determined that no "61" (Complaint Report) was prepared on November 28, 2006, he ascertained that the Respondent had not contacted the Special Victims Unit (SVU) or the 24 Detective Squad, and he determined that the Respondent had not requested that a female police officer respond to Lihn's residence to speak to Lihn about the need for her cooperation in investigating her robbery complaint.

On cross-examination, DiBartolomeo confirmed that Lihn had told the Respondent that she did not see the face or the clothing of the perpetrator who robbed her because he had approached her from behind. DiBartolomeo confirmed that Lihn had made a complaint about another lieutenant assigned to the 24 Precinct. [This complaint was "unsubstantiated" based on a SVU determination that Lihn was "uncooperative" and "not deemed credible." Respondent's Exhibit (RX) A]. DiBartolomeo testified that a lieutenant does not have the discretion to not take a complaint even where the complainant cannot provide information regarding the perpetrator of the crime.

Police Officer Peter Lumia

Police Officer Peter Lumia testified that he was on duty on November 28, 2006, partnered with Police Officer Michael Wilson. Wilson was the operator of their RMP and Lumia was the recorder. When they met Lihn outside her residence at [REDACTED], Lihn appeared upset and was crying. She told them that five to ten minutes ago, she had been walking on [REDACTED] [REDACTED] when she felt a hard object being pushed into her

back. A male voice told her, "Give me your bag!" The male grabbed her purse off of her arm and fled. Lihn described her purse as being a pink-colored, Marc Jacobs bag. She stated that she had \$200 in cash inside her purse but no credit cards. Lihn did not turn around. She immediately returned to her apartment at [REDACTED] and called 911. Lumia recalled that he told Lihn, "You need to make a report," that she should also come with them in their RMP so that they could canvass the area, and that she should come to the 24 Detective Squad. Lihn refused to make a report, she refused to go to the 24 Precinct to speak with detectives, and she refused to join the officers in their car to canvass the area. Lumia testified that he believed Lihn. He did not offer to have a female officer respond to the scene. When the Respondent arrived, he spoke to Lihn. He then told Lumia that Lihn was uncooperative and he directed Lumia to "90 yellow the job." Lumia wrote this in his activity log and transmitted to the dispatcher a disposition of "90 yellow." When Lumia was asked if he would have prepared a "61" (Complaint Report) worksheet had the Respondent not told him to "90 Y" the call, Lumia answered, "Probably."

On cross-examination, Lumia confirmed that when he asked Lihn if she would get into their car so that they could canvass the area, she replied, "Absolutely not. It is pointless. I never saw him and he's not going to have my bag."

Police Officer Michael Wilson

Police Officer Michael Wilson testified that he was on duty on November 28, 2006 partnered with Lumia. When they arrived at [REDACTED] Lihn appeared to Wilson to be upset and annoyed. When they asked Lihn to come with them in their RMP

so that they could canvass the area, she refused. They insisted that she join them to canvass the area, she again said, "No." Wilson testified that he believed that Lihn had been the victim of a robbery. Since Lumia was the recorder, he would have prepared the Complaint Report. When the Respondent spoke to Lihn, Wilson did not hear their conversation. The Respondent directed them to "90 yellow the call" and "resume patrol." Lumia transmitted the disposition of "90 yellow." They then resumed patrol.

On cross-examination, Wilson testified that Lihn was uncooperative. Wilson did not ask Lihn if she wanted make a report. Lihn did not tell him that she was uncomfortable.

The Respondent's Case

The Respondent testified on his own behalf.

The Respondent

The Respondent testified that he personally interviewed Lihn "to find out why she had called 911 and requested police to respond." He recalled that "she stated she was walking down [REDACTED] from [REDACTED] when an unknown male did approach her from behind take \$200 and flee in an unknown direction. I asked her if she was able to give any type of description as to what this individual was wearing, if he had an accent, what his race was. She wasn't able to give any other information. I asked her if she was injured. She had some redness on her face. I asked if she needed an ambulance, she refused." He asked her to get into the RMP "with the two officers so we can conduct a canvass. She refused that as well. She kept reiterating over and over again

that she just wanted to go to her friend's house who resided down on the east side I asked her if she would come in to the precinct speak to the detectives She also refused to come into the precinct I asked her to at least get in the vehicle We can do a canvass of the area and see if her property was thrown anywhere on the street, anywhere around the location where she claimed she was a victim of a robbery "

Lahn told him that she thought she was missing \$200 and that she had also lost her keys She did not tell him that she had been sexually molested or that the perpetrator had put his hand down her pants and gently penetrated her with his finger

The Respondent "kept talking to the complainant" and he "asked her again to cooperate with us and we will help her out in whatever capacity that she needed," but "she kept stating over and over again she didn't want to make a report, she just wanted to go her friend's house " He "offered the assistance of the two officers that responded to the scene to escort her down to her friend's house on the lower east side and she also refused He asked her again "if she would like to make a report, at which time she stated she did not and I instructed the officers to mark the job uncooperative complainant, 90 yellow, unnecessary call "

The Respondent testified that based upon his experience in the field, code "90 Y" was an appropriate final disposition of this 911 call because "this is done usually when we have people that allege that a crime has occurred and when they don't want to give any information to the police afterwards we have no report to be taken at that time because we have nothing to investigate " The Respondent testified that his disposition of this case had absolutely nothing to do with the crime statistics of the 24 Precinct

On cross-examination, the Respondent was provided with a copy of the SPRINT report to refresh his recollection [Department's Exhibit (DX) 1] [This report contains details of Lihn's complaint including that only "6 mins ago" she had been "robbed -- money taken" at "gun pt," that "she was attacked from behind," that the "perp said he had a gun," that a "poss (possible) gun was held in her back," and that she "was hit in the face ']' Referring to this report, the Respondent recalled that Lihn's call to 911 came in at 2340 hours, that he arrived at the scene at 2342 hours, and that the "UNCOOP COMPLAINTV 90Y" disposition was transmitted to Central at 2352 hours

When he was asked, "What did you ask her regarding this individual who she said came up from behind her?" He replied, "I asked her if she knew what race the individual was, if the individual had an accent" and "what type of clothing" he was wearing Lihn told him that since she never turned around, she did not see him and she did not see his clothes

He asked Lihn whether "the individual had an accent" but "she was unable to say if the person had an accent or not " Because Lihn "was being so apprehensive in providing any details or providing any type of assistance to us," he questioned whether Lihn was telling him the truth as to whether a crime had actually occurred or "whether it was fabricated " He was asked, "Was it your assessment that even after speaking to her for five minutes that she was making this up?" He answered, "Yes, it was "

Lihn did not mention to him that her purse had been stolen during the robbery and he first learned that her purse had been taken by the robber "five days later when she came into the precinct to make the report " He was asked if he had inquired as to whether the approximately \$200.00 that Lihn told him was taken from her person had

been removed from her pocket or from her purse, he replied, "I didn't inquire ' He did not request that a detective or a female officer respond to the scene to speak with Lihn The Respondent testified that he has prepared complaint reports even where the complainant could not identify the perpetrator On November 28, 2006, he was not aware of any previous complaints that Lihn may have made

The Respondent offered in evidence (RX B) a "Complaint - Follow Up Informational (PD 313 081A) prepared by Police Officer Augustine regarding an interview of Lihn conducted on December 4, 2006 at 1730 hours at the 24 Detective Squad regarding the robbery Officer Augustine wrote that at this interview Lihn stated that

She was taking a walk around Riverside Drive as she walked E/B towards West End Ave (unk St) she noticed a male carrying a box by a gate but did not pay any attention to him She walked by and heard some-one ask "can I have a hand ' as she turned around to see where the voice came from the C/v stated that the male approached her from behind and with his right hand covered her mouth and grab her with his left hand He then pulled out a gun with his right hand and stuck it in her back He then took the gun and pistol whipped her in the face and stated "you look good enough to fuck" and proceeded to run the gun down her face, chest and down her pants The male then put the gun in her back and with his left hand proceeded to go down the C/v's pants and gently penetrate her with his finger The C/v stated that she had money (she was carrying a Purse in her left hand which only contained¹ house keys, money was kept in front pant pocket) She gave the male 200 00 USC then stomped on his foot and managed to run away She ran away and went around the block she then stopped and started crying and proceeded to walk home The C/v called 911 from her residence She states that she would not be able to identify since the male was behind her during the entire incident

Officer Augustine further noted on this report that "Special Victims" was notified and that a detective was going to respond to the 24 Precinct but that Lihn "was very emotional and refused to wait at the 24 Squad "

¹ This appears to be a misspelling of the word "contained."

FINDINGS & ANALYSIS

It is charged that after Lihn informed the Respondent that she had been the victim of a serious violent offense, he failed to conduct an investigation regarding the offense and to prepare related reports, as required, and that he wrongfully and without just cause failed to properly supervise Police Officers Lumia and Wilson in that he improperly directed them not to prepare a complaint report regarding Lihn's allegation that she had been robbed

The Respondent admitted at this trial that he personally took charge of the investigation of Lihn's 911 complaint, that after he interviewed Lihn he instructed the officers not to prepare a Complaint Report Worksheet regarding Lihn's allegation that she had been robbed, and that he directed the officers that a disposition code of "90 yellow, uncooperative complainant" be transmitted to the dispatcher. The questions presented are whether he properly investigated Lihn's complaint and whether he properly instructed the officers not to prepare a Complaint Report Worksheet regarding Lihn's allegation

I find the Respondent Guilty based on the SPRINT report in evidence (DX 1), the testimony of Officer Lumia, and the Respondent's own testimony regarding his hands-on investigation and disposition of Lihn's robbery complaint

Before the Respondent even met Lihn, he was aware that she was alleging that she had just been victimized by the perpetration of a serious, violent offense. Having heard the dispatcher's transmission, the Respondent was aware that Lihn had just told the 911 operator that only "6 mins ago" she had been "robbed -- money taken" when "she

was attacked fr behind" by a "perp" who "said he had a gun," that this "poss gun was held in her back" and that she "was hit in the face " (DX 1)

Despite the serious nature of Lihn's complaint (and the possibility that a gun that had just been used in the commission of a robbery was in the hands of a perpetrator who might still be in the area possibly stalking another victim), the Respondent admitted that he spent a mere "five minutes" interviewing Lihn and he acknowledged that in conducting this brief interview he failed to elicit from her that during the robbery her purse had been taken by the perpetrator. When he was asked if he had asked Lihn whether the \$200.00 in cash that she told him was taken from her had been removed from her pocket or from her purse, he replied, "I didn't inquire." Officer Lumia testified that Lihn told him that her purse had been taken by the perpetrator and she provided a detailed description of her purse as a pink, Marc Jacobs bag. Thus, it is clear that if the Respondent had properly interviewed Lihn he would have learned this also.

His failure to elicit this information from her was a significant investigative omission. Since the SPRINT report indicates that at the time the Respondent was interviewing Lihn only 15 minutes had passed since the occurrence of the robbery, the perpetrator might well have still possessed Lihn's bag. If the Respondent had obtained from Lihn, as Lumia did, a description of her bag, sector units patrolling in the area could have immediately been alerted to look for a man holding such a bag or trying to throw it away. As the Respondent was aware, recent and exclusive possession of property taken during a robbery can constitute strong evidence that the possessor committed the robbery.

Also, even though Lihn told him that she had not seen the perpetrator's face or his clothing, as an experienced officer and a supervisor, the Respondent was, or should have

been, aware that where a perpetrator commits a robbery in a manner designed to prevent the victim from seeing his face, a suspect can be identified as the perpetrator by means of a post-arrest voice identification procedure if the victim is able to recognize the perpetrator's voice² The Respondent testified that the only question he asked Lihn about the perpetrator's voice was whether "the individual had an accent" and that "she was unable to say if the person had an accent or not " The Respondent did not claim that he had specifically asked her, as he should have, whether she might be able to recognize the perpetrator's voice if he was required to repeat the words "I have a gun!" (If the Respondent had consulted with Lumia he would have learned that Lihn had told him that the perpetrator had also told her, "Give me your bag!")

Based on the above, it is clear that the Respondent failed to properly investigate Lihn's allegation that a serious, violent crime had just occurred.

With regard to the charge that the Respondent wrongfully and without just cause failed to properly supervise Officers Lumia and Wilson in that he improperly directed them not to prepare a complaint report regarding Lihn's allegation that she had been robbed, I credit DiBartolomeo's testimony that the Respondent did not have the discretion to not take a complaint even where the complainant could not provide information regarding the perpetrator of the crime. Also, the Respondent admitted that he has prepared complaint reports where the complainant could not identify the perpetrator

The Respondent testified that he directed that the officers not prepare a Complaint Report Worksheet regarding Lihn's allegation and that he directed that the final disposition of Lihn's call to 911 be "uncooperative complainant, 90 yellow, unnecessary

² See People v. Rufino, 198 AD 2d 7, 603 NYS2d 143, 1993 NY App Div LEXIS 10270 (1st Dept 1993)

call” because “this is done usually when we have people that allege that a crime has occurred and when they don’t want to give any information to the police afterwards we have no report to be taken at that time because we have nothing to investigate ” Contrary to the Respondent’s assertion that Lihn did not want to give the officers any information, the record establishes that Lihn provided detailed information on how the robbery was committed and what specific property was taken from her both to the 911 operator and to Officer Lumia

With regard to Lihn’s refusal to make a report on the spot, to go to the 24 Precinct to speak with detectives, or to join the officers in their car to canvass the area, the trauma of her victimization must be considered The Respondent acknowledged that Lihn appeared to him to be “visibly upset” (Lumia recalled that she was crying) and that “she kept stating over and over again” that she “just wanted to go her (female) friend’s house ”

As an experienced officer and a supervisor, the Respondent was, or should have been, aware that in the immediate aftermath of a violent crime it is not unusual for the victim to desire to put the trauma of their victimization behind them as quickly as possible and immediately seek the comfort and support of someone they trust In this regard, I find it significant that the Respondent admitted that he did not even transmit a request that a female officer, who Linh might feel more comfortable talking to, respond to the scene to speak to her privately and try to persuade her to more fully cooperate with the three male officers

With regard to the Respondent’s assertion that Lihn was not a believable complainant, the Respondent acknowledged that he saw redness on her face consistent with having just been hit on her face Since the redness on her face constituted physical

evidence which supported her claim that the perpetrator had hit her on her face, this injury, although minor, lent credence to her assertion that she had just been the victim of a violent crime. Contrary to his own observation that Lahn appeared to have been struck on her face, the Respondent, incredibly, testified that even though he only questioned Lahn for five minutes, his assessment was that her complaint was "fabricated" and that she had made up a story that she had been robbed.

The Respondent admitted that when he interviewed Lahn on November 28, 2006, he had no knowledge of any complaints that Lahn had made previously. Since the Respondent's conduct on November 28, 2006, must be judged solely in light of what he knew about Lahn that night, what information he elicited from Lahn and what decisions he made, Respondent's counsel's argument that prior to November 28, 2006, Lahn had lodged a "bogus complaint" about a different incident is not relevant to the actions the Respondent took on the night of November 28, 2006.

Similarly, although Respondent's counsel argued that at her interview on December 4, 2006, Lahn offered a description of the robbery to Officer Augustine (RX B) which was inconsistent with the version she gave on the night of November 28, 2006, even if her subsequent statement contained inconsistencies,³ this subsequently made statement is not relevant to the Respondent's actions on the night of November 28, 2006.

The Respondent is found Guilty as charged.

³ Respondent's counsel characterized as recent fabrications Lahn's statements to Officer Augustine (RX B) that the perpetrator had run his gun down her chest and pants, that he put his left hand inside her pants and "gently penetrated her with his finger," and that he had told her, "You look good enough to fuck." However, if the perpetrator had, in fact, done these things, these intimate invasions of her body provide an explanation for why she told the Respondent that she just wanted to go her (female) friend's house and for why she, as the Respondent put it, "was being so apprehensive in providing any details" to a male officer.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

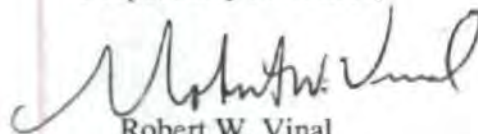
The Respondent was appointed to the Department on December 8, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of failing to conduct a proper investigation regarding a robbery complaint and failing to properly supervise two officers in that he improperly directed them to transmit a "90 Y" disposition code to the dispatcher and not to prepare a complaint report worksheet regarding Lihn's claim that she had been robbed.

The Assistant Department Advocate (the Advocate) recommended that the Respondent be required to forfeit 15 vacation days as a penalty.

As a supervisor, the Respondent must be held to a high standard of conduct with regard to investigating an allegation that a serious, violent crime has occurred and with regard to instructing police officers under his supervision as to the proper disposition of a complaint alleging that a serious, violent crime has occurred. Therefore, I recommend that the Respondent forfeit 25 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

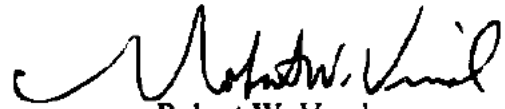


POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
LIEUTENANT SEAMUS LAVIN
TAX REGISTRY NO 920494
DISCIPLINARY CASE NO 83341/07

The Respondent received an overall rating of 4.0 on his 2009 performance evaluation, 4.0 on his 2008 evaluation, and 4.5 on his 2005 evaluation. He has been awarded two Meritorious Police Duty medals and three Excellent Police Duty medals. [REDACTED] He has no prior disciplinary record.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner – Trials